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E.O. 12958: DECL: 03/05/2018
TAGS: [MARR](#) [MASS](#) [PREL](#) [PTER](#) [PE](#)
SUBJECT: USG RESPONSE TO PERUVIAN CONSIDERATIONS FOR
RESUMPTION OF DHS COUNTER-NARCOTICS FLIGHTS FROM PIURA

Classified By: PM/RSAT Director David Bame, Reasons 1.4 (b) and (d)

SUMMARY

¶1. (C) Department requests Embassy deliver the following dipnote containing the U.S. counterproposal to the Government of Peru's (GOP) draft considerations for resuming DHS counter-narcotics flights from Piura. Additionally, the Department seeks Embassy clarification whether it contemplates the need for a follow-on agreement that would be binding, or whether the proposed, non-binding considerations are sufficient. If a binding agreement is sought, the C-175 process will have to be followed. End summary.

OBJECTIVES

¶2. (C) Department requests Embassy pursue the following actions and objectives:

-- Deliver the dipnote and U.S. counterproposal (para 4-5 below) to appropriate GOP interlocutors, and communicate any immediate concerns to USG points of contact listed in paragraph 6. Request a GOP reply to the USG counterproposal by March 31, 2008.

-- If Embassy deems it feasible under the circumstances, raise with Peruvian interlocutors whether they would also consider including language in the considerations that would authorize the use of "other mutually agreed locations within Peru," in order to allow the subject flights from alternative locations due to logistics requirements, runway closures or unforeseen events.

-- Reiterate GOP obligation to abide by standards of the Cooperating Nations Information Exchange System (CNIES) agreement.

-- Provide assessment on whether a non-binding or binding agreement would be required.

REPORTING DEADLINE

¶3. (U) Embassy should report results of efforts by cable to

DIPNOTE

14. (SBU) Begin text:

(Complimentary opening) has the honor to refer to its note #311 of April 12, 2006, proposing to resume United States Bureau of Customs and Border Protection (USCBP) Orion P-3 counternarcotics surveillance flights from Piura Fuerza Aerea Peru (FAP) Air Base and the Ministry's note in reply, SME-DCD No. 6-3/139, proposing considerations for the resumption of such flights. The Embassy wishes to inform the Ministry that careful attention has been given to the considerations proposed by the Government of Peru and proposes that the Government of Peru authorize the resumption of counternarcotics surveillance flights based on joint resolution of terms in the attachment. The Embassy notes that as part of the U.S. Government's actions post-September 11, 2001, the U.S. Department of Homeland Security (USDHS) was established and USCBP is now part of the USDHS. The U.S. Coast Guard, which conducts counternarcotics surveillance missions using aircraft such as the HC-130, is also part of USDHS. Further, USCBP has added new aircraft to its inventory that are capable of conducting the same missions as the P-3. Therefore, the Embassy proposes that the Government of Peru include all USDHS aircraft in its authorization to resume counternarcotics surveillance missions from Piura as reflected in the attached non-binding considerations.
(Complimentary closing).

End text.

COUNTERPROPOSAL

15. (SBU) Begin text:

CONSIDERATIONS FOR THE AUTHORIZATION OF THE RESUMPTION OF SURVEILLANCE FLIGHTS AGAINST THE ILLICIT TRAFFICKING IN NARCOTICS WITH U.S. DEPARTMENT OF HOMELAND SECURITY AIRCRAFT FROM PIURA AIR BASE

(1) The Government of the United States of America (USG) will inform the Government of the Republic of Peru (GOP) of authorizations the USG has received from other governments for subject flights taking place in such governments, territorial airspace. The term "territorial airspace" as used herein will have the same meaning as it is defined by international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS).

(2) U.S. Southern Command (USSOUTHCOM), or its designated component, will conduct the planning of all Counter-narcotics Detection and Monitoring missions from Piura Air Base, and inform the United States Military Assistance Advisory Group Lima (USMAAG) of the details of these missions. USMAAG will establish procedures with the Peruvian Armed Forces (PAF) Joint Command to coordinate such operations within Peruvian territorial airspace, and to coordinate any combined operations outside of Peruvian territorial airspace. The USG proposes to use the existing bi-monthly SMAAG/Embassy-PAF Bilateral Counternarcotics Working Meetings for coordination of these missions. United States Department of Homeland Security (DHS) aircraft (which are state aircraft as defined under the Chicago Convention) will fly "due regard" in accordance with International Civil Aviation Organization (ICAO) flight rules when the designated mission area is outside of Peruvian territorial airspace. Flight plans will be filed as appropriate for transiting territorial airspace.

(3) All such aircraft deployments will be conducted in accordance with an overarching Standard Operating Procedure or Operating Arrangement, approved by the GOP and the USG.

The Peruvian Ministry of Defense (MOD) will approve or disapprove each aircraft deployment.

(4) Members of the Peruvian Navy (PNAV) and/or PAF are permitted to be on board the DHS aircraft during these air operations. Representatives from other Peruvian government entities may be permitted to be on board the DHS aircraft during these air operations, as authorized by the Joint Interagency Task Force-South (JIATF-S), or by the mission commander if mission requirements permit, and the presence of such personnel is in accordance with the USG standing Host Nation Rider policy and procedure.

(5) Information obtained as a result of these operations within Peruvian territorial airspace will be shared only with the GOP. Information obtained during subject operations conducted outside of Peruvian territorial airspace may be shared with the GOP. All such information will be treated as "Sensitive But Unclassified" by the USG. This information will be provided through the PNAV Liaison Officer (LNO) to be established at JIATF-S. Although the JIATF-S PNAV LNO will be the information conduit to the GOP, aircraft under Tactical Control (TACON) of JIATF-S will transmit information to JIATF-S. Peruvian personnel on board the aircraft flying missions hereunder may have access to on-board equipment when authorized by USG authorities. In accordance with the USG Host Nation Rider policy and procedure, Peruvian personnel who are on board will not be permitted to liaison directly with their control posts on land unless mission requirements permit. Access may change based on operational considerations.

(6) The logistics support for these operations will be coordinated and mutually determined with the PAF Joint Command through the PAF. JIATF-S will complete final logistics coordination in cooperation with the USMAAG.

(7) If any of the aircraft land in other than Peruvian or U.S. territory due to circumstances beyond the crew's control, the USG will assume the lodging, transportation and meal expenses of the Peruvian personnel on board as necessary in accordance with U.S. law and regulations. Health related expenses will not be covered by the USG.

(8) In accordance with the USG Host Nation Rider policy and procedures, Peruvian personnel on board U.S. aircraft participating in these air operations will not be provided with health and life insurance by the USG.

(9) Nothing in this document is intended by the Government of Peru and the Government of the United States to create legally binding obligations under international law. Additionally, nothing in the aforementioned discussion or subject program is intended to annul, amend, modify, supersede or otherwise alter the binding obligations contained in the agreement between our two governments on the topic of interception-related assistance, memorialized through an exchange of notes on August 16, 2005 (commonly referred to as the "CNIES Agreement").

End text.

POINT OF CONTACT

16. (U) Please contact PM/RSAT Jeff Burnett, 202-647-9146, BurnettJC@state.sgov.gov; WHA/AND Barbara Thomas, 202-647-4177, ThomasBM@state.sgov.gov; or OSD/WHA Walter Earle, 703-697-3327, Walter.Earle@osd.smil.mil for any further background information.
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